IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS
JUDGES HOOD, MURPHY AND MARKEY

PATRICK MANN, SR., GAYE MANN, his wife, and PATRICK MANN, JR., a minor, by and through his Next Friend, GAYE MANN,

Plaintiff-Appellees,

v

ST. CLAIR COUNTY ROAD COMMISSION,

Defendant-Appellant.

Docket No. 122845

COA Docket No. 226443

St. Clair County Circuit Court
Case No. 98-001686-NI

BRIEF ON APPEAL – APPELLANT

ORAL ARGUMENT REQUESTED

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INTRODUCTION

Plaintiffs were injured in an automobile accident, and they bring this claim against the Road Commission alleging faulty roadway maintenance. The singular issue before the Court is whether defendant may have the jury determine plaintiffs' full measure of comparative fault for failure to wear seat belts. Plaintiffs argued, and the Circuit Court agreed, that the comparative fault assessment is limited to 5% by statute. The Court of Appeals granted interlocutory appeal. In a majority decision, it upheld the Circuit Court. The Road Commission contends that the lower courts are wrong, and that the statutory limitation does not apply in this case.

STATEMENT OF QUESTION INVOLVED

WHETHER THE 5% STATUTORY CAP ON THE REDUCTION OF DAMAGES FOR FAILURE TO WEAR SEATBELTS (MCL 257.710E(6); MSA 9.2410(5)(6)) APPLIES TO A CLAIM AGAINST A ROAD COMMISSION FOR IMPROPER ROADWAY MAINTENANCE OR REPAIR?

Plaintiffs say, "Yes."

The Circuit Court said, "Yes."

Court of Appeals Judges Murphy and Hood said, "Yes."

Court of Appeals Judge Markey dissented and said, "No."

Defendant says, "No."

STATEMENT OF MATERIAL PROCEEDINGS AND FACTS

Defendant takes this appeal from a March 22, 2000 Order of the St. Clair County Circuit Court denying the defendant's Motion in Limine regarding evidence of plaintiffs' failure to use a seatbelt.

This case arises out of motor vehicle accident that occurred on October 26, 1997. According to the Complaint, Patrick Mann, Sr., lost control of his pickup truck after he left the roadway and attempted to bring his vehicle back onto the paved surface. Plaintiffs blame an alleged roadway "edge drop" as the cause of the accident, and claim that the Road Commission is liable for failing to keep the roadway in reasonable repair.

At trial, the Road Commission intends to offer the testimony of a biomechanical expert, Dr. Richard Stalnaker, that the plaintiffs were not wearing seatbelts at the time of the accident. He will also testify that they would have escaped with minor, superficial injuries, had they been wearing seatbelts. Defendant's position is that the jury should make a full assessment of comparative fault for failure to wear seatbelts.

The Road Commission brought a motion in limine, anticipating plaintiffs' argument that the safety belt statute's (MCL 257.710e(6)) 5% cap on the reduction of damages applies. The Circuit Court agreed with plaintiffs, and entered an order on March 22, 2000, that the statutory 5% cap does apply to this case. Plaintiffs take the position, as a consequence of that holding, that the jury should be instructed as to the safety belt statute's 5% reduction cap. They also contend that Dr. Stalnaker should not be allowed to testify.

Defendant appealed, because, for the reasons discussed below, the 5% reduction does not apply to the claim against the Road Commission. Defendant must be allowed to offer the testimony of Dr. Stalnaker, and the jury must be allowed to assess comparative fault without the limit of the 5% reduction cap.

The Court of Appeals granted interlocutory review, but it has now given a published decision affirming the Circuit Court. Judges Murphy and Hood held that this case differs from the Supreme Court's decision in Klinke v Mitsubishi Motor Corp. 458 Mich 582; 581 NW2d 272 (1998), and that application of the Motor Vehicle Code's 5% damage limitation reduction for seatbelt non-use to highway maintenance claims does not violate the Michigan Constitution's Title-Object Clause. Judge Markey, on the other hand, would have held that this case is controlled by Klinke, and specifically that the damage reduction cap cannot be applied to this sort of claim without violating the Title-Object Clause. She would have reversed the Circuit Court on that basis.

On July 3, 2003, this Court granted leave to appeal from the November 15, 2002 decision of the Court of Appeals, limited to whether the limitation on the reduction of damages based on plaintiff's negligence established by MCL 257.710e(6) applies in this case.

ARGUMENT

THE 5% STATUTORY CAP ON THE REDUCTION OF DAMAGES FOR FAILURE TO WEAR A SEATBELT (MCL 257.710E(6)) DOES NOT APPLY TO CLAIMS AGAINST A ROAD COMMISSION ALLEGING FAILURE TO MAINTAIN THE ROADWAY IN REASONABLE REPAIR.

A. Standard of Review.

The question presented here involves an issue of statutory interpretation. Matters of statutory interpretation are subject to de novo review. Stozicki v Allied Paper Co Inc, 464 Mich 257, 263; 627 NW2d 293 (2001). Moreover the issue presented is a pure question of law which receives de novo review on appeal. Cardinal Mooney High School v Michigan High School Althletic Ass'n, 437 Mich 75, 80; 467 NW2d 21 (1991).

B. Applying the 5% Damage Reduction Cap for Failure to Wear a Seatbelt in This Case Violates the Michigan Constitution's Title-Object Clause.

The application of MCL 257.710e(6)'s 5% damage reduction cap to this case violates the Title-Object Clause of the Michigan Constitution. The Title-Object Clause provides, in pertinent part: "No law shall embrace more than one object, which shall be expressed in its title." Const. 1963, art. 4, § 24. This provision requires that (1) a law must not embrace more than one object, and (2) the object of the law must be expressed in its title. Pohutski v Allen Park, 465 Mich 675, 690-691; 641 NW2d 219 (2002). Its limitation "ensures that legislators and the public receive proper notice of legislative content and prevents deceit and subterfuge." Id. at 691. The goal of the clause is not to restrict legislation, but to guarantee notice. Id.

The "object" of a law is defined as its general purpose or aim. Id. If a law contains diverse subjects that have no necessary connection, it violates the Title-Object Clause. Id.

The purpose of the Title-Object Clause was stated by Justice Cooley fifteen years after it was included in the Constitution of 1850:

> The history and purpose of this constitutional provision are too well understood to require any elucidation at our hands. The practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection, with a view to combine in their favor the advocates of all, and thus secure the passage of several measures, no one of which could succeed upon its own merits, was one both corruptive of the legislator and dangerous to the state. It was scarcely more so, however, than another practice, also intended to be remedied by this provision, by which, through dexterous management, clauses were inserted in bills of which the titles gave no intimation, and their passage secured through legislative bodies whose members were not generally aware of their intention and effect. There was no design by this clause to embarrass legislation by making laws unnecessarily restrictive in their scope and operation, and thus multiplying their number; but the framers of the constitution meant to put an end to legislation of the vicious character referred to, which was little less than a fraud upon the public, and to require that in every case the proposed measure should stand upon its own merits, and that the legislature should be fairly notified of its design when required to pass upon it.

People ex rel. Drake v Mahaney, 13 Mich 481, 494-495 (1865).

The safety belt statute, MCL 257.710e(6), is a part of the Michigan Vehicle Code. It provides:

> Failure to wear a safety belt ***in violation of this section*** may be considered evidence of negligence and may reduce the recovery for damages ***arising out of the ownership maintenance, or operation of a motor vehicle***. However, such negligence shall not reduce the recovery for damages by more than 5%.

Id. (emphases added)

This Court interpreted the Safety Belt Statute in 1998 in Klinke v Mitsubishi Motor Corp, 458 Mich 582; 581 NW2d 272 (1998). There, it held that the statutory damage reduction cap does not apply to a products liability claim against an automobile manufacturer. The plaintiff's decedent in that case was driving her vehicle when its wheel and tire failed, causing the vehicle to flip several times. Plaintiff's decedent had not been wearing her seatbelt. Plaintiff sued alleging negligence and breach of various warranties against the vehicle and tire manufacture. The jury awarded Plaintiff over $5,000,000, but found that the decedent was 90% comparatively negligent for failing to wear her seatbelt. The trial court, however, invoked the Safety Belt Statute and reduced the damages by only 5%. Defendants were

successful on appeal, and ultimately reinstated the jury's assessment of 90% comparative negligence. By a plurality decision, the Court concluded that the damage reduction cap could not apply to vehicle manufacturer liability, because to do so would violate the Title-Object Clause.

Judge Murphy's opinion in this case provides an able summary of those opinions, at least to the point where he departs from them to distinguish this case. As he notes, Justice Weaver's lead opinion, joined by Justice Taylor, concludes that the Title-Object Clause prevents the Safety Belt Statute from affecting the civil liability of manufacturers. The title of the Michigan Vehicle Code states that it is an act, in part, "to provide for the civil liability of owners and operators of vehicles." It does not, however, provide for the civil liability of manufacturers. (14a-15a). To extend the Safety Belt Statute to manufacturer liability cases would therefore invite the exact harm guarded against by the Title-Object Clause: extending the legislation into an area not contemplated by the Legislature or the public.

The second opinion of the plurality was written by Justice Boyle, joined by Justices Mallet and Brickley. They agreed with Justice Weaver's Title-Object Clause analysis. However, they additionally focused on the Safety Belt Statute's language, "***arising out of the ownership maintenance, or operation of a motor vehicle.***" They observed that because this language tracked that of the No-Fault Act, it evidenced a legislative intent to apply the Safety Belt Statute's damage limitation only to No-Fault cases. They concluded, for this second reason as well, that the seatbelt statute does not apply to a claim of manufacturer liability, where the plaintiff's injuries were not caused by, nor did they arise from, the **defendant's** use, ownership, or operation of a motor vehicle. (15a).

Judge Murphy summed up his recitation of the Klinke holding as follows:

> Two justices therefore supported limiting the safety belt statute to the dimensions found in the title to the vehicle code and three supported limiting it to no-fault actions. All five agreed, however, that the title of the vehicle code did not contemplate regulation of manufacturer liability. Klinke is binding authority because a majority agreed on this line of reasoning....

(15a).

Judge Murphy went on, however, to distinguish the case at bar, which alleges defective roadway maintenance or repair pursuant to MCL 3691.1402, from the manufacturer liability claims in the Klinke case. He concluded that the Title-Object Clause would not be violated by applying the safety belt damage reduction cap to the road commission:

> Here, there is a natural correlation or connection between governmental liability for failing to maintain a highway in reasonable repair and the Michigan Vehicle Code, which governs the operation of vehicles on those same public highways. No such correlation with the vehicle code arises in the context of a products liability action that can conceivably cover anything from a defective motor vehicle to a defective toaster. If the title to the vehicle code allows the Legislature to enact statutes addressing the regulation and use of streets and highways within the code, it would be illogical to conclude that the scope of the title did not necessarily include legislative authority to enact statutes directing limits on liability and comparative negligence, where streets and highways are not kept in reasonable repair.

(18a)

This distinction is artificial and should be rejected. First, it uses the term "natural correlation" to explain why application of the cap to a governmental liability case would not run afoul of the Title-Object Clause. This loosens the test for such a violation, however, which according to Justice Cooley asks whether there is a "necessary connection." Hence, the proper question is whether anything in the title of the Michigan Vehicle Code has a "necessary connection" to the liability of a road commission (or other governmental agency) for failing to maintain highways in reasonable repair. There simply is no such necessary connection. Although it is true that motor vehicles operate on the highways that governmental agencies are charged to maintain and repair, governmental agency liability is provided separately by the Governmental Tort Liability Act, MCL § 691.1401, et. seq. It is not necessary that a vehicle code, which provides diverse regulations regarding the use of streets and highways, should also provide for the liability of a governmental agency for its alleged failure to keep a highway in reasonable repair.

Second, as Judge Markey aptly pointed out in her dissent:

> Highway liability is not found in the vehicle code. It is true that the title of a statute may not list every specific purpose for it. Metropolitan Funeral System Ass'n v Comm'r of Ins, 331 Mich 185, 192; 49 NW2d 131 (1951). Nonetheless, the Legislature does not appear to have intended for the vehicle code to control highway commission liability. In fact, the vehicle code defines a highway in far broader terms that the governmental immunity statute. It defines a highway or street as the "entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel." MCL 257.20 (emphasis added). The highway liability exception to governmental immunity, however, defines the area of roadway to which liability attaches in narrower terms: "'Highway' means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles." MCL 691.1401(e). Clearly, if highway liability were controlled even in part by the vehicle code, definitional conflicts would immediately arise.
>
> The Legislature obviously intended that the liability of governmental units be controlled by the governmental immunity statute, not the broader vehicle code. It is logical to surmise, then, that the vehicle code's provision regarding comparative negligence as a setoff to liability was not intended to extend to the governmental immunity act's highway exception any more than does the vehicle code's definition of a highway or street. Inclusion of "regulation and use of streets and highways" in the title of the vehicle code is a prelude to the detailed traffic laws contained in that same statute (see MCL 257.601 et seq) and is not intended as an expansive supplement to the governmental immunity statute. The use of the phrase "to provide for the regulation and use of streets and highways" in the title to the vehicle code is insufficient under the title-object clause to create or reduce a public road commission's liability.

(23a).

Stated otherwise, highway liability does not come within the vehicle code title's reference to "regulation and use of streets and highways," because highway liability does not derive from the "regulation and use of streets and highways." It derives only from failure to "maintain" or "repair" the improved portion of the roadway as recognized by MCL 691.1402. As Judge Markey points out:

> Inclusion of "regulation and use of streets and highways" in the title of the vehicle code is a prelude to the detailed traffic laws contained in that statute

> (see MCL 257.601 et seq.) and is not intended as an expansive supplement to the governmental immunity statute....

(Exhibit B, p. 2).

For these reasons, the majority decision from the Court of Appeals must be reversed. The reasoning of Klinke has direct and controlling application here. Judge Markey reduced the issue to its purest form:

> The statutory five percent cap on reduction for comparative negligence for failure to use safety belts does not apply to this highway liability case because the title of the vehicle code provides for liability of owners and operators of vehicles, but does not provide for liability of a road commission. Klinke controls because a majority of justices agreed on Justice Weaver's reasoning.

(24a)

At first glance, a March 28, 2001 amendment to the Michigan Vehicle Code (2000 PA 408) might appear troublesome on this issue, but it will not change the analysis. This legislation added MCL 257.230a and at the same time amended the title of the Michigan Vehicle Code by adding "to impose liability upon the state or local agencies." Prior to this amendment, the title to the Michigan Vehicle Code stated:

> An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers, to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds and grant programs; to provide for the appropriation of money for certain grant programs; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles and service of process on residents and non-residents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; to

> repeal all other acts or parts of acts in consistent with this act or contrary to this act; and to repeal certain parts of this act and a specific date.

1949 PA 300.

After 2000 PA 408, the title states:

> An act to provide for the registration, titling, sale, transfer, and regulation of certain vehicles operated upon the public highways of this state or any other place open to the general public or generally accessible to motor vehicles and distressed vehicles; to provide for the licensing of dealers; to provide for the examination, licensing, and control of operators and chauffeurs; to provide for the giving of proof of financial responsibility and security by owners and operators of vehicles; to provide for the imposition, levy, and collection of specific taxes on vehicles, and the levy and collection of sales and use taxes, license fees, and permit fees; to provide for the regulation and use of streets and highways; to create certain funds; to provide penalties and sanctions for a violation of this act; to provide for civil liability of owners and operators of vehicles in service of process on residents and non-residents; to provide for the levy of certain assessments; to provide for the enforcement of this act; to provide for the creation of and to prescribe the powers and duties of certain state and local agencies; **to impose liability upon the state or local agencies**; to repeal all other acts or parts of acts and consistent with this act or contrary to this act; and to repeal certain parts of this act on a specific date.

2000 PA 408. (emphasis added)

Thus, 2000 PA 408 amended the title of the Michigan Vehicle Code to include, among other things, the phrase "to impose liability upon the state or local agencies." Apparently, this change was necessary in light of § 230a, also added by 2000 PA 408, which makes a police agency "holding a motor vehicle unlawfully beyond . . . 30 calendar days" liable for damages.[1]

Plaintiff might argue that the Title-Object Clause arguments are invalid, because the title to the Michigan Vehicle Code has been amended to include the imposition of liability upon local agencies. That argument, if offered, would have to be rejected.

[1] It is not clear why § 230a(3) uses the term "motor vehicle," whereas the remainder of the statute applies only to "motorcycles."

First, 2000 PA 408 had not taken effect at the time of the accident in this case, nor even at the time of the Road Commission's motion in limine. Consideration of the amended title in this case would amount to retroactive application of the amendment. The general rule is that statutory amendments are not retroactive unless they specifically provide otherwise. Etefia v Credit Technologies, Inc., 245 Mich App 466, 474; 628 NW2d 577 (2001). Here, nothing in 2000 PA 408 indicates any intent for the amendment to apply retroactively, or that it was otherwise remedial.

Second, and perhaps more importantly, by amending the title in connection with the enactment of § 230a, the Legislature apparently acted on a belief that amending the title was necessary to impose liability upon a governmental agency from within the Michigan Vehicle Code. Stated otherwise, the Legislature must have believed that the title of the Michigan Vehicle Code, prior to its amendment by 2000 PA 408, did not encompass the imposition of liability upon governmental agencies.

Finally, retroactive application of the title's amendment to this case would be nonsensical, because the Title Object Clause is concerned with notice to both the Legislature and the public of the scope of the legislation. The proper focus must be upon the language of the title at the time the pertinent legislation is enacted. The Safety Belt Statute took effect in 1985. Therefore, because the title of the Michigan Vehicle Code in 1985 did not contain any provision for the imposition of civil liability upon a governmental agency, any application of the seatbelt statute to a state or local agency is constitutionally infirm pursuant to the Title-Object Clause.

C. Because "Arising Out of the Ownership, Maintenance or Operation of a Motor Vehicle" is a Term of Art, the Safety Belt Statute Applies Only in Cases Where There is a Causal Connection Between the Injury and the Defendant's Ownership, Maintenance, or Operation of a Motor Vehicle, Such as in a No-Fault Case.

Justice Boyle's opinion in Klinke, with Justices Mallet and Brickley concurring, focused on the safety belt statute's "arising out of the ownership, maintenance, or operation of a motor vehicle"

language. She noted that this language was a term of art used repeatedly in the No-Fault Act, MCL 500.3101, *et seq*. Based on this observation, she concluded:

> More significantly, as explained below, MCL 500.3135(2); MSA 24.13135(2), the provision providing the only statutory basis for recovery for automobile negligence after the no-fault act abolished recovery in tort, uses this same term of art. The fact that the safety belt statute tracks the language of the no-fault act demonstrates the Legislature's clear intent to apply the five percent limitation on reduction of damages for a plaintiff's negligence within the context of the no-fault act. No such intent is demonstrated with respect to actions for defects in design and manufacture of an automobile. On the basis of the statutory language employed in the safety belt statute, a products liability case generally falls outside the scope of the statute. Thus, I concur with Justice Weaver's result.

Id. at. 594.

Following Justice Boyle's reasoning through to its logical conclusion, the term of art "arising out of the ownership, maintenance or operation of a motor vehicle" has been construed in the context of the No-Fault Act as requiring a "causal" connection between the ownership, maintenance or use of a motor vehicle and the alleged injury. For example, in Citizens Ins Co of America v Tuttle, 411 Mich 536, 545-546; 309 NW2d 174 (1981), the Court considered whether a non-motorist tortfeasor could benefit from the No-Fault Act's partial abolition of liability contained in MCL 500.3135(1). The Court concluded:

> In the context of the no-fault act, therefore, the abolition of "tort liability arising from the ownership, maintenance or use * * * of a motor vehicle" carries the implicit sense of tort liability for injuries or damage caused by the ownership, maintenance or use of a motor vehicle.
>
> Only persons who own, maintain or use motor vehicles can be subject to tort liability for injuries or damage caused by the ownership, maintenance or use of a motor vehicle. The non-motorist tort-feasor cannot be subject to tort liability for injuries or damage caused by the ownership, maintenance or use of a motor vehicle. The abolition of tort liability for injuries or damage caused by (arising from) the ownership, maintenance or use of a motor vehicle, therefore, does not abolish the tort liability of the non-motorist tort-feasor.

Id.

In other words, the Tuttle Court concluded that the term "arising from the ownership, maintenance or use of a motor vehicle" requires a causal nexus between the defendant's ownership, maintenance or use of a motor vehicle and the plaintiff's injury. In a similar manner, in this case the phrase from the Safety Belt Statute, "arising out of the ownership, maintenance or operation of a motor vehicle," should be construed to contain the same requirement of a causal nexus between the defendant's ownership, maintenance or operation of a motor vehicle and the plaintiff's injuries. This requirement would be a very practical implementation of Justice Boyle's reasoning in Klinke that the safety belt statute was intended to apply in cases controlled by the No-Fault Act.

The case at bar is not a claim for damages arising from the defendant's ownership, maintenance or use of a motor vehicle. Rather, the claim arises from the Highway Exception to governmental immunity, codified at MCL 691.1402. Three of the justices who participated in the Klinke decision rejected application of the damage reduction cap to a product manufacturer on this basis. The force of their logic would have also prevented application of the cap to a governmental agency under the highway exception.

Klinke provides all the guidance needed for resolving the question presented here, but it is useful to note that justice is served by rejecting application of the 5% cap to road commissions in roadway repair cases. A governmental agency will never benefit from the cap in these cases, because it will never be postured as a plaintiff seeking recovery for damages arising out of a motor vehicle accident. Rather, if the cap applies against governmental agencies, it will only ever serve to punish them by artificially increasing their allocation of "fault" for an injury. Stated slightly differently, road commissions have no control over whether drivers on their highways use safety belts. The power to affect a road commission's liability, if the cap applies, would lie entirely in the hands of potential plaintiffs. A road commission would never be in position to limit its exposure to damages caused by the failure to wear a seat belt. But it could never be in a position to have the advantage of the cap on its own behalf.

By way of contrast, where the cap applies only in No-Fault cases, it will apply to both actors equally. In accidents between motorists, both are obligated in the same way to wear seatbelts, both have the same decision making power regarding using or not using them, and both face the same potential impact of the 5% limitation. In short, a logical fairness supports applying the cap among equally situated and impacted motorists; that is, in No-Fault cases. There is no logical balance, on the other hand, if it is applied in a case like this between a motorist and a non-motorist. That would be the proverbial mix of apples and oranges. In short, logic supports the conclusion, just as does the statutory language, that the cap was meant to apply to accidents between motorists and not to other sorts of cases.

Therefore, the Court of Appeals should have held that the 5% cap does not apply, and that the jury may assess the full amount of comparative fault attributable to the plaintiffs upon a showing that they were not wearing their seatbelts. It has erred by holding otherwise.

D. The Court of Appeals Decision is Too Broad Because After the Tort Reform of 1996, a Defendant is Not Prevented From Arguing That a Plaintiff is "At Fault" for Failing to Wear a Safety Belt.

Significant tort reform legislation took effect on March 28, 1996. This legislation dramatically altered Michigan tort law by switching from a system of "comparative negligence" to a system of "comparative fault." Because the plaintiffs' cause of action in this case accrued after the effect date of the tort reform legislation, there is no doubt that the "comparative fault" system applies. Because "fault" is defined more broadly than "negligence," a defendant should not be precluded, even in a case to which the safety belt statute applies, from arguing that a plaintiff can be up to 100% at fault for failing to wear a safety belt.

It is a court's responsibility, when construing a statute, to give effect to the Legislature's intent. In re Messer Trust, 457 Mich 371, 379-380 579 NW2d 73 (1998). To do so, a court first looks to the specific language of the statute, giving words their plain and ordinary meaning. Turner v Auto Club Ins Ass'n, 448 Mich 22, 27, 528 NW2d 681 (1995). Where the language is unambiguous, a court presumes

that the Legislature intended the meaning expressed, and the statute must be enforced as written. DiBenedetto v Westshore Hosp, 461 Mich 394, 402; 605 NW2d 300 (2000). When construing a statute, a court presumes that every word is used for a purpose, and to the greatest extent possible, gives effect to every clause and sentence. Pohutski, 465 Mich at 684. "The Court may not assume that the Legislature inadvertently made use of one word or phrase instead of another." Id. A court should also use caution to avoid a construction that renders any part of the statute surplusage or nugatory. Id.

For purposes of this issue, there are three relevant comparative fault statutes. First, MCL § 600.2957 provides, in pertinent part:

> In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the liability of each person shall be allocated under this section by the trier of fact and, subject to section 6304 [MCL 600.6304], in direct proportion to the person's percentage of fault. In assessing percentages of fault under this subsection, the trier of fact shall consider the fault of each person, regardless of whether the person is, or could have been, named as a party to the action.

Second, MCL § 600.2959 provides, in pertinent part:

> In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, the court shall reduce the damages by the percentage of comparative fault of the person upon whose injury or death the damages are based as provided in section 6306 [MCL 600.6306].

Third, MCL § 600.6304 provides, in pertinent part:

> (1) In an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death involving fault of more than one person, including third-party defendants and nonparties, the court, unless otherwise agreed by all parties to the action, shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings indicating both of the following:
>
> (a) The total amount of each plaintiff's damages.
>
> (b) The percentage of the total fault of all persons that contributed to the death or injury, including each plaintiff . . . .

(2) In determining the percentages of fault under subsection (1)(b), the trier of fact shall consider both the nature of the conduct of each person at fault and the extent of the causal relation between the conduct and the damages claimed.

* * *

(8) As used in this section, "fault" includes an act, omission, conduct, including intentional conduct, a breach of warranty, or a breach of a legal duty, or any conduct that could give rise to the imposition of strict liability, that is a proximate cause of damage sustained by a party.

The plain language of these provisions is clear: A plaintiff will be considered at fault if his conduct was a proximate cause of his damages, and any damages awarded must be reduced by the percentage of fault attributed to him by a trier of fact. Lamp v Reynolds, 249 Mich App 591, 598-599; 645 NW2d 311 (2002). Before assigning a percentage of fault to a plaintiff, the trier of fact must first conclude that the plaintiff was at fault within the meaning of MCL § 600.6304(8), *i.e.*, some act, omission, or conduct by the plaintiff was a proximate cause of the damages. Id at 599. It is the defendant's burden to allege and prove that the plaintiffs' act or omission or conduct was the proximate cause of the plaintiff's damages. MCL 600.2960; MCL 600.6304(a); see also Lamp, 249 Mich App at 599.

To demonstrate the requisite proximate cause between the plaintiff's alleged faults and the resulting injury, the defendant must prove that the plaintiff's act, omission or conduct was both a cause in fact and a legal, or proximate cause of the injury. Skinner v Square D Co, 445 Mich 153, 162-163; 516 NW2d 475 (1994); see also, Lamp, 249 Mich App at 599. Cause in fact occurs when the plaintiff's damages, more than likely, would not have occurred but for the at-fault conduct. Haliw v Sterling Heights, 464 Mich 297, 310; 627 NW2d 581 (2001); Lamp, 249 Mich App at 599. Legal, or proximate, cause is "that which operates to produce particular consequences without the intervention of any

independent, unforeseen cause, without which the injuries would not have occurred." Helmus v Dept of Transportation, 238 Mich App 250, 256; 604 NW2d 793 (1999).

Here, the distinction between "comparative fault" and "comparative negligence" is critical. "Although the bench and bar may still refer to the defense as one of 'comparative negligence,' that description is a misnomer and defies the true nature of the statutes as legislatively enacted." Lamp, 249 Mich App at 602. Because MCL § 600.6304(a) specifically defines "fault" as "an act, an omission, conduct, including intentional conduct, . . . that is a proximate cause of damage sustained by a party," the application of the comparative fault statutes does not depend on the type of at-fault conduct. Lamp, 249 Mich App at 602. Rather, the comparative fault statutes operate against each person, including a plaintiff, whose conduct is a proximate cause of the plaintiffs' damages. Id.

The Safety Belt Statute, MCL 257.710(e)(6), allows the failure to wear a safety belt in violation of the statute to be considered as "evidence of negligence." This statute had great significance under the comparative negligence regime that existed when it was enacted. Under the current comparative fault regime, however, the significance is minimized because the defendant need only show that the plaintiff was "at fault," and not necessarily negligent. Therefore, the plain language of the tort reform statutes, by utilizing the broad concept of "fault" rather than to the relatively narrow concept of negligence, have provided defendants with the opportunity to argue that a plaintiffs' failure to use a safety belt device warrants apportionment of up to 100% comparative fault to the plaintiff.

E. Alternatively, Even if This Court Concludes That the 5% Damage Limitation Applies, it Should Not Conclude That the Road Commission is Prevented From Presenting Evidence That the Plaintiff is Up to 100% at Fault for the Alleged Damages.

Even if this court concludes that the cap on damages of MCL 257.710(e)(6) applies to this case, there is no principled basis to prevent the Road Commission from presenting evidence, and the trier of fact from concluding, that the plaintiff was up to 100% at fault for the alleged injuries. The plain

language of MCL 257.710(e)(6) permits the failure to wear safety belts a violation of the statute to be considered evidence of negligence, but it does not limit the percentage of negligence (or percentage of "fault") in any way. Rather, the only limitation is that "such negligence shall not reduce the recovery of damages by more than 5%."

This distinction becomes important, for example, given the limitation on non-economic damages provided in MCL § 600.2959, which states that if a person's percentage of fault is greater than the aggregate fault of others, the economic damages are reduced by that party's own percentage of fault, and non-economic damages are not awarded. For example, it is possible for a plaintiff to be attributed greater than 50% of the total fault, either solely for failure to wear a safety belt device, or in combination with other factors. Under tort reform, this plaintiff would not be entitled to any non-economic damages, and any economic damages would be reduced based upon that person's allocation of fault. It would not be inconsistent with the plain language of the statutes, under such a scenario, to preclude that plaintiff's award for non-economic damages, but to limit to 5% the reduction of economic damages attributable to the failure to wear a safety belt.

In other words, the apportionment of fault that is required after the 1996 tort reform carries significance outside of the mere reduction of a plaintiff's damage award; depending on the precise allocation, entire categories of damages may be eliminated. Construing the Safety Belt Statute's limitation on the reduction of damages to also limit the apportionment of fault would unnecessarily interfere with the "comparative fault" regime that is designed to allow a defendant to obtain a fair portion of liability for an injury.

RELIEF REQUESTED

For all of the foregoing reasons and authorities, defendant, St. Clair County Road Commission, respectfully requests that the Court reverse the decisions of the Court of Appeals and the Circuit Court by ordering that the 5% damages reduction cap does not apply, and that defendant may offer its proofs, particularly the testimony of Dr. Richard Stalnaker, concerning plaintiffs' failure to wear seatbelts and the consequences of those omissions for their injuries, and defendant asks that it be awarded its costs and fees incurred in these proceedings.

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